

DEC 24 2008

Board of Vocational Nursing
and Psychiatric Technicians

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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC
TECHNICIANS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. PT-2007-455

TSEGE NEGASH
3405 E. Chardonney Lane, Unit B
Orange, CA 92869

ACCUSATION

Psychiatric Technician License No. PT 29407

Respondent.

Teresa Bello-Jones, J.D., M.S.N., R.N. ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau"), Department of Consumer Affairs.

Psychiatric Technician License

2. On or about March 29, 1995, the Bureau of Vocational Nursing and Psychiatric Technicians issued Psychiatric Technician License Number PT 29407 to Tsege Negash ("Respondent"). The psychiatric technician license expired on September 30, 2008.

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STATUTORY PROVISIONS

3. Section 4520 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensed psychiatric technician for any reason provided in Article 3 (commencing with Code section 4520) of the Psychiatric Technicians Law (Code § 4500, et. seq.)

4. Code section 118, subdivision (b) provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 4545 of the Code, the Board may renew an expired license at any time within four years after the expiration.

5. Code section 101.1, subdivision (b)(1), states:

In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added that section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.

6. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the Code.

7. Code section 4521 states, in pertinent part:

The board may suspend or revoke a license issued under this chapter [the Psychiatric Technicians Law (Bus. & Prof Code, 4500, et seq.)] for any of the following reasons:

(a) Unprofessional conduct, which includes, but is not limited to, any of the following:

(1) Incompetence or gross negligence in carrying out usual psychiatric technician functions. . . .

REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 2576.5, subdivision (b)(1), states:

The licensed psychiatric technician performs services requiring technical and manual skills which include the following:

1 ...
2 (b) Provides direct patient/client care by which the licensee:

3 (1) Performs basic nursing services

4 9. California Code of Regulations, title 16, section 2576.6, states, in pertinent
5 part:

6 (a) A licensed psychiatric technician shall safeguard patients'/clients'
7 health and safety by actions that include but are not limited to the following:

8 ...

9 (b) A licensed psychiatric technician shall adhere to standards of the
10 profession and shall incorporate ethical and behavioral standards of professional
11 practice which include but are not limited to the following:

12 (1) Maintaining current knowledge and skills for safe and competent
13 practice. . . .

14 10. California Code of Regulations, title 16, section 2577, states:

15 As set forth in Section 4521 of the code, gross negligence is deemed
16 unprofessional conduct and is grounds for disciplinary action. As used in Section
17 4521 "gross negligence" means a substantial departure from the standard of care
18 which, under similar circumstances, would have ordinarily been exercised by a
19 competent licensed psychiatric technician, and which has or could have resulted in
20 harm to the consumer. An exercise of so slight a degree of care as to justify the
21 belief that there was a conscious disregard or indifference for the health, safety, or
22 welfare of the consumer shall be considered a substantial departure from the
23 above standard of care.

24 11. California Code of Regulations, title 16, section 2577.1, states:

25 As set forth in Section 4521 of the code, incompetence is deemed
26 unprofessional conduct and is grounds for disciplinary action. As used in Section
27 4521, "incompetence" means the lack of possession of and the failure to exercise
28 that degree of learning, skill, care and experience ordinarily possessed and
exercised by responsible licensed psychiatric technicians.

COST RECOVERY

12. Code section 125.3 provides, in pertinent part, that a Board may request
the administrative law judge to direct a licensee found to have committed a violation or
violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

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BACKGROUND

13. Patient K.W. was a developmentally disabled 42-year-old adult who resided full-time at the Fairview Developmental Center in Costa Mesa, California. K.W. was on "choke alert" and also had a history of PICA disorder¹. K.W. was found by Respondent and other members of the staff to be lying on the floor of the center breathing and jerking, with her eyes open. Respondent interpreted K.W.'s jerking as a seizure, although K.W. had no history of seizure disorder. K.W. subsequently died as a result of mechanical asphyxiation due to aspirating a paper towel.

FIRST CAUSE FOR DISCIPLINE

14. Respondent has subjected her license to discipline pursuant to Code section 4521, subdivision (a)(1) on the grounds of unprofessional conduct, in that on or about July 17, 2004, while on duty as a psychiatric technician at Fairview Developmental Center, Respondent committed acts constituting gross negligence in her care of patient K.W., as defined in California Code of Regulations, title 16, section 2577, in the following respects:

- a. Respondent failed to initiate CPR procedures in a timely manner.
- b. Respondent failed to implement the CPR procedure/protocol correctly.
- c. Respondent administered air oxygen to the patient without insuring that the patient's airway was clear.
- d. Respondent incorrectly verbalized to the emergency and code blue team that K.W. was having a seizure.
- e. Respondent failed to communicate to the emergency and code blue team that the patient had a choke alert and a PICA disorder.

SECOND CAUSE FOR DISCIPLINE

15. Respondent has subjected her license to discipline pursuant to Code section 4521, subdivision (a)(1) on the grounds of unprofessional conduct, in that on or about

1. A PICA disorder is an eating disorder manifested by a craving to ingest any material not normally considered food; including starch, clay, ashes, crayons, cotton, grass, cigarette butts, soap, twigs, wood, paper, metal, or plaster.

1 July 17, 2004, while on duty as a psychiatric technician at Fairview Developmental Center,
2 Respondent committed acts constituting incompetence in her care of patient K.W., as defined in
3 California Code of Regulations, title 16, section 2577.1, in the following respects:

- 4 a. Respondent failed to initiate CPR procedures in a timely manner.
- 5 b. Respondent failed to implement the CPR procedure/protocol correctly.
- 6 c. Respondent administered air oxygen to the patient without insuring that
7 the patient's airway was clear.
- 8 d. Respondent incorrectly verbalized to the emergency and code blue team
9 that K.W. was having a seizure.
- 10 e. Respondent failed to communicate to the emergency and code blue team
11 that the patient had a choke alert and a PICA disorder.

12 THIRD CAUSE FOR DISCIPLINE

13 16. Respondent has subjected her license to discipline pursuant to Code
14 section 4521, subdivision (a) for unprofessional conduct as a result of her conduct on or about
15 July 17, 2004, while on duty as a psychiatric technician at Fairview Developmental Center, as
16 more particularly set forth in paragraphs 14 and 15, above.

17 PRAYER

18 WHEREFORE, Complainant requests that a hearing be held on the matters herein
19 alleged, and that following the hearing, the Director of the Department of Consumer Affairs issue
20 a decision:

- 21 1. Revoking or suspending Psychiatric Technician License Number PT
22 29407, issued to Tsege Negash;
- 23 2. Ordering Tsege Negash to pay the Bureau of Vocational Nursing and
24 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
25 pursuant to Code section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: December 24, 2008



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Bureau of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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